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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,911	11/06/2000	John Hermon-Taylor	117-323	7604

23117 7590 01/13/2003  
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EXAMINER
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ZEMAN, ROBERT A

ART UNIT	PAPER NUMBER
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1645  
DATE MAILED: 01/13/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/705,911	HERMON-TAYLOR ET AL.
	Examiner Robert A. Zeman	Art Unit 1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 October 2002.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 24-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 24-47 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)           | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ . | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

Applicant's election with traverse of Group 117 in Paper No. 9 is acknowledged. The amendment filed on 10-22-2002 is also acknowledged. Claims 1-23 have been canceled. Claims 24-47 have been added. Contrary to Applicants assertion to the contrary the newly added claims do not constitute a single embodiment of the elected invention and hence are subject the restriction requirement outline below.

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 24 and 25, drawn to a method of treating or preventing mycobacterial disease comprising vaccinating with polypeptides comprising SEQ ID NO:24 or fragments thereof, classified in class 424, subclass 248.1.
- II. Claims 26 and 27, drawn to a method of treating or preventing mycobacterial disease comprising vaccinating with polynucleotides comprising SEQ ID NO:23 or fragments thereof, classified in class 514, subclass 44.
- III. Claim 28, drawn to method for increasing the *in vivo* susceptibility of mycobacterium to antimicrobial drugs utilizing polypeptides comprising SEQ ID NO:24, classified in class 424, subclass 248.1.
- IV. Claims 29-37 and 43-47, drawn to methods of monitoring or detecting the response of an animal or human to vaccination against a polypeptide comprising SEQ ID NO:24 or fragments thereof comprising the detecting the presences of immune complexes (antibody detection), classified in class 435, subclass 7.1.

V. Claims 38-42, drawn to methods of monitoring or detecting the response of an animal or human to vaccination against a polypeptide comprising SEQ ID NO:24 or fragments thereof comprising detecting cell mediated immune reactivity against said polypeptide, classified in class 435, subclass 7.24.

The inventions are distinct, each from the other because of the following reasons:

Inventions I-V are each separate and distinct from each other as they are each drawn to differing methods having different goals, differing steps, utilizing differing reagents and leading to differing results.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (703) 608-7991. The examiner can normally be reached on Monday- Thursday, 7am -5:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

*LZS*  
LYNETTE R. F. SMITH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

Robert A. Zeman  
January 10, 2003